



Directive to State Contractors and Bidders



INTRODUCTION

This directive is based on Article 1, Section 2, and Article V, Section 29 of the 1963 Michigan State Constitution; on the Elliott-Larsen Civil Rights Act, P.A. 453, and the Persons with Disabilities Civil Rights Act, P.A. 220 of the Public Acts of 1976 as amended; and on the resolutions of the State Administrative Board adopted January 17, 1967 and April 16, 1968.

The principle of equal opportunity has been a stated goal of America since this nation was conceived, but the statement of the principle has not, and will not, establish equal opportunity as a fact of life in America. Only by appropriate and measurable action can we expect to move effectively toward the result of real equal opportunity for all citizens.

In 1963, the people of the State of Michigan adopted a new Constitution establishing the Civil Rights Commission and charging the Commission with the duty of securing the civil rights of all the people of the State of Michigan.

The State's obligation is to assure that tax monies are not used to perpetuate unlawful discrimination in public contracting and related employment. In order to work effectively toward equality of opportunity, the Michigan Civil Rights Commission, in cooperation with the State Administrative Board and other departments of government, established a program of contract compliance. The Department of Civil Rights is responsible for monitoring millions of dollars worth of federal, state and local funds through its contract compliance program. The contract compliance program involves the review of equal opportunity practices of companies doing business, or seeking to do business, with the state and any of its political subdivisions. The objective is to identify and eliminate institutionalized discrimination and job bias in the business community, thereby increasing the number of underrepresented individuals hired, recruited, promoted and upgraded in contractor work forces.



I. STANDARD

The equal employment opportunity standard for each contractor is reasonable representation of the relevant labor force.

II. REQUIREMENT

The equal employment practices of all contractors, vendors, subcontractors and suppliers doing business with the State of Michigan and/or who propose to do business with the State are subject to a review by the Michigan Department of Civil Rights. If, as a result of such review, the contractor appears not to be in compliance with the standard of reasonable representation, such contractor shall be required to prepare an adequate written plan of action. The plan shall include specific, effective steps that will result in meeting the standard of reasonably representative workforce integration in each job category. In the preparation of such a written plan of action, consideration shall be given to the availability of underrepresented groups and the need for new or additional employees by the contractor.

III. DEFINITIONS

A. Equal Employment Opportunity

Equal employment opportunity means the provision of full employment opportunities, i.e., hiring, promotion, etc., without discrimination based on religion, race, color, national origin, age, sex, height weight, marital status, arrest record, or disability as defined in the Elliott-Larsen Civil Rights Act, 1976 P.A. 453, and the Persons with Disabilities Civil Rights Act, 1976 P.A. 220.

B. Census Reporting Categories

For purposes of measurement with the equal employment standard, the census groups are defined as follows:



1. **American Indian or Alaska Native.** A person having origins in any of the original peoples of North and South America (including Central America), and who maintains tribal affiliation or community attachment.
2. **Asian.** A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.
3. **Black or African American.** A person having origins in any of the black racial groups of Africa.
4. **Hispanic or Latino.** A person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race. The term, "Spanish origin," can be used in addition to "Hispanic or Latino."
5. **Native Hawaiian or Other Pacific Islander.** A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.
6. **White.** A person having origins in any of the original peoples of Europe, the Middle East, or North Africa.
7. **Multiracial.** A person having parents of different races. This classification and definition is provided for under Michigan law.
8. **Male.**
9. **Female.**



C. Contractor

Contractor is used in this directive to mean all contractors, vendors, subcontractors and suppliers providing or seeking to provide, goods and services for the State and other units of government.

Contractors are employers within the meaning of the Elliott-Larsen Civil Rights Act, 1976 P.A. 453, and the Persons with Disabilities Civil Rights Act, 1976 P.A. 220 and are bound by the provisions of those statutes.

D. Available Pool

The available pool shall be determined in light of U.S. Supreme Court cases when determining minimum utilization levels for underrepresented groups. For gender, a civilian labor force figure and for race a population based representation figure in reasonable recruiting area is used for jobs with skills readily available or easily acquired. When jobs require high skill level and licenses, an available labor force representation figure for the reasonable recruitment area is used.

E. Equal Employment Opportunity Reporting Categories

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| 1. Officials and Managers | 6. Craft Workers (Skilled) |
| 2. Professionals | 7. Operatives (Semi-Skilled) |
| 3. Technicians | 8. Laborers (Unskilled) |
| 4. Sales | 9. Service Workers |
| 5. Office and Clerical | |

F. Affirmative Action Program

Affirmative action is a set of positive steps that an employer uses to overcome the present effect of past discriminatory practices. Effective affirmative action programs consist of comprehensive analysis,



followed by careful and thoughtful development, including identified objectives and the steps by which their achievement is planned. Affirmative action programs which are carefully designed to overcome the pervasive current and past effects of discrimination are permissible by law. An affirmative action plan should be designed to implement programs that will assure equal and fair treatment for all employees or prospective employees. The measure for success or failure of the program is the result.

IV. REPORTING REQUIREMENTS FOR CONTRACTORS ON EMPLOYMENT OF CENSUS GROUPS

- A. At a minimum, every contractor shall report the number of individuals, according to census group(s) employed at jobs within each EEO reporting category in each major organizational unit.
- B. In addition, employers having several different job groups in any EEO reporting category will report in a more detailed manner.
 1. These employers shall list all job titles as they appear in payroll records, from the lowest to the highest paid, in each EEO reporting category within each major organizational unit.
 2. Jobs of similar content, wage rate, and entry requirements will be grouped for reporting purposes.
 3. The number of underrepresented individuals working in each job group within each EEO reporting category in each organizational unit shall be identified.



V. DETERMINE THE AVAILABILITY OF CENSUS GROUPS FOR EACH EEO CATEGORY OR JOB GROUP

- A. Define the contractor's reasonable recruiting area for each job group or EEO category after considering the following factors:
 1. Community patterns
 2. Qualified or qualifiable unemployed labor force. For this information, contact your local Michigan Unemployment Agency (MUA).
 3. Competitive position of each facility's wages for similar jobs in the surrounding labor market.
 4. Relative desirability of the job group or EEO category in question (wages, career opportunity, quality of work life) — employees will commute further for more desirable jobs.
 5. Data that may have been compiled on the residence(s) of applicant(s) and employees. Evidence must demonstrate fair recruitment.
 6. Special qualifications for the job group.
 7. Proximity of facilities capable of training qualified applicants.
- B. Determine the pool of qualifiable applicants in the contractor's reasonable recruiting area considering the following factors:
 1. The breakdown of the population of the labor area surrounding the facility — especially for jobs that require skills readily available or easily acquired;
 2. The size of the underrepresented individuals' unemployment force in the labor area surrounding the facility;



3. The percentage of the underrepresented individuals' work force as compared with total work force in the immediate labor area;
 4. The general availability of underrepresented individuals having requisite skills in the immediate labor areas;
 5. The availability of underrepresented individuals having requisite skills in an area in which the contractor can reasonably recruit;
 6. The availability of promotable and transferable underrepresented individuals within the contractor's organization;
 7. The existence of training institutions capable of training persons in the requisite skills; and
 8. The degree of training which the contractor is reasonably able to undertake as a means of making all job classes available to underrepresented individuals.
- C. The contractors shall identify specific categories where underrepresentation occurs in their workforce.

VI. CONTRACTORS SHALL EVALUATE THE IMPACT OF THEIR EMPLOYMENT PRACTICES ON UNDERREPRESENTED INDIVIDUALS

- A. Past-fail rates at each significant step in the selection process shall be monitored for all applicants.
- B. Adverse impact of all selection devices shall be identified.
- C. A complete review of the contractor's employment practices for equal opportunity shall include:



1. Recruitment sources
2. Application forms and pre-employment inquiries
3. Tests
4. Interview procedures
5. Reference and security checks
6. Job assignments
7. Job classification and compensation systems
8. Promotions
9. Access to training
10. Transfers
11. Evaluations
12. Adverse actions

D. Contractors are obligated to conduct all employment practices on an equal opportunity basis. Contrary provisions of collective bargaining agreements do not negate this obligation.

VII. EEO POLICY STATEMENT

Contractors providing \$5,000 or more in goods and services to the State of Michigan shall include the “Non-Discrimination Clause for all State Contractors” adopted by the State Administrative Board of January 17, 1967, as amended. Every contractor shall issue a policy statement consistent with that clause.

VIII. AFFIRMATIVE ACTION PLAN

Contractors who do not have reasonable representation of the relevant labor pool shall prepare a written action plan to ensure equal opportunity and non-discrimination.



An effective equal opportunity employment program enables an employer to identify potential problems or concentrations of racial and ethnic minorities, women and people with disabilities in the workplace, from the entry-level to the top leadership. The employer conducts a comprehensive work force analysis to determine the status of minorities, women and people with disabilities at all levels of its enterprise and to precisely determine the causes of any problems identified. Where problems are identified, the employer institutes efforts to eliminate any policies, procedures or practices that are discriminatory and takes proactive measures, including recruitment, training, outreach, and the expansion of mentor programs, to include qualified underrepresented individuals.

Affirmative action plan development encompasses all of the steps utilized when developing and implementing an equal employment opportunity plan.

However, for purposes of designing an affirmative action plan, racial and ethnic groups are defined as: American Indian or Alaska Native, Asian, Black or African American, Hispanic or Latino, Native Hawaiian or Other Pacific Islander, White.

An affirmative action plan shall include:

- Reason for underutilization of the racial or ethnic groups that identifies specific problematic employment practices. The reason cannot be benign, nor solely to promote diversity.
- Identification of the current effect of past discrimination and a narrowly tailored remedy to overcome that effect.
- Relatively short time parameters for the duration of the plan.
- Flexible measurements which do not unnecessarily trammel the rights of others.



- A. Survey of work force
- B. Identification of underutilization
- C. Where substantial underutilization exists, the contractor shall identify barriers to equal opportunity and implement programs to overcome them in at least the following areas:
 - 1. Recruitment
 - 2. Selection
 - 3. Upward mobility systems
 - 4. Wage and salary structure
 - 5. Benefits and conditions of employment
 - 6. Layoff, recall, termination
 - 7. Labor agreement provisions
- D. Goals and Timetables

The purpose of a contractor's establishment and use of goals is to insure that it meets its affirmative action obligation. It is not intended and should not be used to discriminate against any applicant or employee because of race, color, religion, sex, national origin or disability.

For each job group or EEO category in which substantial underutilization of any census group is present, the contractor shall include numerical goals and timetables within its affirmative action plan.

The contractor must demonstrate that it has taken and will take all reasonable steps to meet the standard of reasonable representation of the relevant labor pool in the setting and achievement of its numerical goals.



The annual goals will depend upon such factors as anticipated turnover, expansion or contraction, availability of persons with required skills, realistic appraisal of extent of skill necessary for particular jobs, time necessary to acquire such skill, possibility of on-the-job or other training to acquire skills, and similar considerations. Any pressure to set a goal at a level higher than the actual availability of qualified census groups for the job in question is inconsistent with applicable legal principles.

In no case are the goals to be viewed as rigid quotas. Quotas are illegal. The purpose of setting a projected goal is to permit the employer to measure the success of the steps taken to implement equal employment opportunity. Failure to meet a goal should alert the company that the plan is not working, that additional action is required.

No contractor's compliance status shall be judged alone by whether or not it reaches its goals and meets its timetables. Rather, each contractor's compliance posture shall be reviewed and determined by reviewing the contents of its program, and the extent of its good faith efforts to make its program work toward the realization of the program's goals within the timetables set for completion. Contractors are given an opportunity to explain their processes and decisions.

E. Reporting and record keeping

All contractors who have identified underutilization shall report annually the following:

1. Survey of the current employment by race, national origin, sex, job classification, salary or wage level.



2. Records on applicant flow and each step of the selection process: hires, placements, promotions, requests for transfers, transfers and training participation by race, national origin and sex.
 3. Source of referrals and hires, by race, national origin and sex.
 4. Resignations, layoffs and dismissals by race, national origin and sex.
 5. Progress of company and sub-units toward goals, including revision of hiring and promotion goals and timetables where necessary.
- F. Examples of successful affirmative action measures have included but are not limited to:
- Providing technical assistance, i.e., classroom instruction, to local career technical centers.
 - Funding equipment and construction gear for minorities and female students at career technical centers.
 - Supporting and participating in various programs of underrepresented groups, such as the National Association of Women Business Owners (NAWBO), the American Indian Science and Engineering Society, The American Woman's Economic Development Corporation. The Small Business Administration, the National Minority Supplier Development Council (NMSDC), the U.S. Hispanic Chamber of Commerce, the National Association of Minority Contractors and other state and local minority, women and persons with disabilities associations.
 - Providing major support to minority group organizations such as the United Negro College Fund.



- Providing scholarships.
- Supporting the National Action Council for Minorities in Engineering, Inc.
- Supporting people and equipment for community-based job training programs.
- Offering summer work experience programs for students with disabilities.
- Supporting leading graduate schools that encourage minority enrollment in business and MBA programs.
- Beginning community management programs which train leaders of nonprofit urban organizations.
- Conducting business and contracting with businesses owned by persons with disabilities, minorities and women.
- Depositing money in minority owned banks.
- Providing training and job placement for persons with disabilities.
- Adding excellent talent, including minorities and women, and move them through the business into positions of greater responsibility.
- Identifying individuals with executive potential early in their careers.
- Offering graduate assistance for UNCF faculty members.
- Making employment, pay, and promotion decisions without regard to race, color, religion, sex, national origin or other factors unrelated to a person's ability to do the job.



IX. REPORTING AND AFFIRMATIVE ACTION REQUIREMENTS FOR PERSONS WITH DISABILITIES

- A. Contractors should take specific action to employ and advance in employment qualified persons with disabilities in all job classifications.

Whenever a contractor applies physical or mental job qualification requirements in the selection of applicants or employees for employment or changes in employment status such as promotion, demotion or training, the requirements shall be related to the specific job or jobs for which the individual is being considered.

- B. A complete review of the contractor's employment practices for equal employment opportunity for persons with disabilities shall include at a minimum:
1. Recruitment sources
 2. Application forms and pre-employment inquiries
 - a. Pre-employment inquiries regarding physical and mental health must be limited to the following.

“Can you perform the essential duties of the job in which you wish to be employed, with or without accommodation?”
 - b. Inquiry into contagious or communicable diseases is lawful only when there is firm basis to believe that others may be endangered.
 - c. Pre-employment physical examinations are permitted only when required by state or federal law.



3. Tests
 4. Interview procedures
 5. Reference and security checks
 6. Job assignments
 7. Job classification and compensation systems
 8. Promotions
 9. Transfers
 10. Evaluations
 11. Adverse actions
- C. All new facilities designed, constructed or remodeled for the contractor's use shall be readily accessible and usable by persons with disabilities.
- D. The contractor shall establish and publicize written procedures for:
1. Employee and applicant self-identification as a person with a disability.
 2. Receiving and evaluating employee and applicant requests for reasonable accommodation.

X. REVIEW OF CONTRACTOR'S PROGRESS ON AFFIRMATIVE ACTION PLAN

For those contractors with previously established plans, the Department of Civil Rights shall review the existing affirmative action program to determine progress on the basis of the standards described in Sections IV, V, VI, VIII and IX.



XI. MINORITY AND WOMEN SUBCONTRACTORS

The contractor is encouraged to actively solicit and assist minority and women subcontractors in bidding and performing work or providing goods and services for the State of Michigan. The Department of Civil Rights Contract Compliance Team (CCT) enhances the opportunities and status of all citizens through well-considered policies. In this regard, the contractor should use the services of the CCT to lend support and encouragement to the economic growth and expansion of businesses operated by minority persons, women and people with disabilities.

XII. IMMIGRATION REFORM AND CONTROL ACT OF 1986 (IRCA)

The federal government has exclusive authority over immigration standards. Questions of national origin discrimination are covered by both federal and state law.

Rules requiring: employees to speak only English at all times; specific height or weight; English fluency; and citizenship preferences may be discriminatory if they have the purpose or effect of discriminating against individuals because of their national origin.

XIII. PROCEDURE

- A. The Department of Civil Rights Contract Compliance Team is notified by the contracting agency or the contractor that he/she is a contractor, bidder or potential bidder. It is the responsibility of each contractor desiring to bid on state projects of \$100,000 or more to request a review for a certificate of awardability.

Thirty to 60 days notice may be required for processing a Certificate of Awardability. Any bidder holding a valid certificate may bid on the Department of Management and Budget projects and be awarded contracts at any time during the period for



which the certificate is valid without further review by the Department of Civil Rights.

- B. The Department is committed to regulatory reduction where appropriate and feasible. Collaborative delivery of services at the state and local level will provide service in an efficient manner and minimize duplication of effort. Therefore, the Department may recognize valid equal employment opportunity certifications issued by other units of government responsible for EEO in procurement and contracting after a review and analysis of those government programs.

The Michigan Department of Civil Rights is the central clearing agency for the issuance of Certificates of Awardability and Compliance to be utilized for State of Michigan projects and contracts. This precludes the necessity for any other state agency, to authenticate the validity of equal employment clearances certified by multiple units of government.

- In order to maintain the integrity of Michigan's contract compliance program, CCT retains the right to conduct equal employment opportunity reviews of contractors and bidders seeking to provide goods and services to the state.

- C. The contractor will furnish and file compliance reports within such times and on such forms as the Department of Civil Rights may request. The Department may also require information as to the practices, policies, program, and employment statistics of each subcontractor as well as the contractor. The contractor will permit access to books, records and accounts as requested by the Department of Civil Rights for its purposes of determining compliance with Article 2, Section 209 of the Elliott-Larsen Civil Rights Act and the Persons with Disabilities Civil Rights Act; Acts 453 and 220 of 1976, as amended.



- Companies which meet the equal employment opportunity standard of a reasonably representative work force will be issued certificates of compliance/awardability valid for three years.
 - Companies with an 80 percent reasonably representative work force, subsequent to a fifth review and with a written EEO commitment, will be issued certificates of awardability valid for three years. These companies may be subject to a biennial compliance work force reporting requirement and on-site audits of contracts.
 - Companies with less than 80 percent reasonably representative work force, subsequent to a fifth review and with an EEO plan, may be issued certificates of awardability valid for two years. These companies will be subject to an annual compliance work force reporting requirement and on-site audits of contracts.
- D. If the contractor does not appear to be in compliance, he/she will be invited to develop a plan in accordance with the standard, and adopt a timetable for implementation of the plan. If an acceptable plan and timetable are developed, the contractor will be declared awardable for a specified period of time.
- E. A declaration of awardability for a specified period of time will permit the contractor to be eligible for the award of state contracts during that time period. At the conclusion of that time period, the contractor may request review and redetermination of compliance/ awardability.



- F. The Department of Civil Rights will notify the contracting agency and/or the State Administrative Board of the contractor's status.
- G. Contractors who fail to attain compliance or to develop acceptable plans may be declared not awardable. Upon receipt of written notification, a contractor may request a conciliation conference with the Director of the Contract Compliance Team. If the efforts in conciliation are successful, the contractor's status will be changed to awardable and a certificate issued. If no agreement can be reached in conciliation, the contractor shall be notified by certified mail.
- H. Contractors who have submitted a series of plans may be declared not awardable if they fail to take actions to meet the goals set forth in the plan.
Not awardable contractors may become eligible for a certificate of awardability upon taking corrective actions.

A contractor who receives a non-awardable declaration under this section may petition the Commission for review and reconsideration.

XIV. PROCEDURE FOR RECONSIDERATION

- A. Upon receipt of notification of continued non-awardability, a contractor may petition the Michigan Civil Rights Commission for review and reconsideration. Petitions for review and reconsideration must be filed with the Commission within 30 days of receipt of the determination of non-awardability; must be in writing; and must state the grounds upon which the request is based.
- B. The Director of the Department of Civil Rights may reopen the review, or may direct that a reconsideration hearing be held. Hearings must be conducted before a Commissioner or Hearing Referee appointed



by the Commission, in accordance with the Procedural Rules of the Michigan Civil Rights Commission.

- C. The record and report shall be presented to the Commission for determination of the awardability of the petitioner, and the Commission decision shall be transmitted to the State Administrative Board and the contracting department for the appropriate action.
- D. If a contractor has been declared not awardable, he/she will remain in that status until it may be changed by result of the review and reconsideration process.



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